SUPREME COURT, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1573

UNITED MINE WORKERS OF AMIRICA, *et al.*,

Petitioners,

v.

ISLAND CREEK COAL COMPANY,

Respondent.

Supplemental Memorandum in Support Of Petition for Writ of Certiorari

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As stated in the Petition, the Courts of Appeals have divided sharply on the question whether work stoppages arising solely as a result of the presence of a foreign picket line are enjoinable under this Court's decision in *Boys Markets, Inc.* v. *Retail Clerks Union*, 398 U.S. 235 (1970). At the time the Petition was filed—June 13, 1975—the Courts of Appeals for the Second and Fifth Circuits had held that such work stoppages cannot be enjoined under the authority of *Boys Markets*, while the Courts of Appeals for the Third,

Fourth and Seventh Circuits had held that such stoppages are properly subject to *Boys Markets* restraint.[1]

Since the filing of the Petition, the conflict has been further accentuated by three additional Courts of Appeals decisions. The Sixth Circuit in *Plain Dealer Publishing Co.* v. *Local 53,* 90 LRRM 2110 (C.A. 6, August 15, 1975) has joined the ranks of the Courts holding that foreign picket work stoppages are not enjoinable under *Boys Markets, supra.* The Eighth Circuit held to the contrary in *Valmac Industries, Inc.* v. *Meat Cutters, Local 425,* 89 LRRM 3073 (C.A. 8, July 29, 1975) and *Associated Contractors* v. *Laborers, Local 563,* 89 LRRM 3077 (C.A. 8, July 29, 1975).

With respect to the Seventh Circuit, the Petition called attention to the tension between the decisions in *Inland Steel Co.* v. *Local Union 1545,* 505 F.2d 293 (C.A. 7, 1974) (foreign picket stoppage held enjoinable under *Boys Markets*) and *Gary-Hobart Water Corp.* v. *NLRB,* 511 F.2d 284 (C.A. 7, 1975) (discipline of employee for refusal to cross stranger picket line held to be unfair labor practice in absence of "clear and unmistakable language" demonstrating waiver of the right to honor picket line). In *Hyster Co.* v. *Independent Machine Assn.,* 89 LRRM 2885 (C.A. 7, July 7, 1975), the Seventh Circuit purported to distinguish *Inland Steel* on the basis of the broad reading given by the Court to the arbitration provision involved in that case, and held that *Boys Markets* restraint of the foreign picket stoppage was precluded by *Gary-Hobart* and the Fifth Circuit's decision in *Amstar Corp.* v. *Amalgamated Meat Cutters & Butcher Workers,* 468 F.2d 1372 (C.A. 5, 1972).[2] Thus, there now appears to be a conflict within the Seventh Circuit on the issue posed by this Petition.

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[1] See cases cited in Petition for Certiorari, fns. 2-6.

[2] See Petition, fn. 6.

Petitioners submit that this Court has little alternative but to grant the Petition and resolve the proliferating conflict which now involves no less than seven Courts of Appeals.

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